

**LODI CITY COUNCIL
REGULAR CITY COUNCIL MEETING
CARNEGIE FORUM, 305 WEST PINE STREET
WEDNESDAY, JUNE 2, 2004**

C-1 CALL TO ORDER / ROLL CALL

The City Council Closed Session meeting of June 2, 2004, was called to order by Mayor Hansen at 5:32 p.m.

Present: Council Members – Beckman, Hitchcock, Howard, Land, and Mayor Hansen

Absent: Council Members – None

Also Present: City Manager Flynn, Interim City Attorney Schwabauer, and City Clerk Blackston

C-2 ANNOUNCEMENT OF CLOSED SESSION

- a) Conference with Human Resources Director, Joanne Narloch, concerning Vacation Accrual Cap Policy regarding all bargaining units and unrepresented employees pursuant to Government Code §54957.6 (HR)
- b) Conference with Human Resources Director, Joanne Narloch, regarding Association of Lodi City Employees concerning Maintenance and Operators pursuant to Government Code §54957.6 (HR)
- c) Actual Litigation: Government Code §54956.9(a); one case; People of the State of California; and the City of Lodi, California v. M & P Investments, et al.; United States District Court, Eastern District of California, Case No. CIV-S-00-2441 FCD JFM
- d) Actual litigation: Government Code §54956.9(a); one case; Hartford Accident and Indemnity Company, et al. v. City of Lodi, et al., Superior Court, County of San Francisco, Case No. 323658
- e) Conference with legal counsel – initiation of litigation: Government Code §54956.9(c); two cases
- f) Conference with legal counsel – anticipated litigation – significant exposure to litigation pursuant to subdivision (b) of Section 54956.9; one case; pursuant to Government Code §54956.9(b)(3)(A) facts, due to not being known to potential plaintiffs, shall not be disclosed
- g) Actual Litigation: Government Code §54956.9(a); one case; City of Lodi, a California Municipal Corporation, and Lodi Financing Corporation, a California nonprofit corporation v. Lehman Brothers, Inc. and US Bank National Association, United States District Court, Eastern District of California, Case No. CIV. S-04-0606 MCE-KJM

C-3 ADJOURN TO CLOSED SESSION

At 5:32 p.m., Mayor Hansen adjourned the meeting to a Closed Session to discuss the above matters.

The Closed Session adjourned at 6:55 p.m.

C-4 RETURN TO OPEN SESSION / DISCLOSURE OF ACTION

At 7:05 p.m., Mayor Hansen reconvened the City Council meeting, and Interim City Attorney Schwabauer disclosed the following actions.

In regard to Item C-2 (a), direction was given to negotiating parties.

In regard to Item C-2 (b), by a 5-0 vote, Council approved the bargainers to reinstate the meet and confer process with the Maintenance & Operators Unit.

In regard to Item C-2 (c), Council approved filing a petition for certiorari in the Randtron case.

In regard to Item C-2 (d), by 4-1 vote with Council Member Land dissenting, Council approved an audit by Barger & Wolen of Envision Law Groups bills for the calendar year 2003 and January 2004 at a fixed fee of \$200,000.

In regard to Items C-2 (e), (f), and (g), no reportable action was taken in closed session.

A. CALL TO ORDER / ROLL CALL

The Regular City Council meeting of June 2, 2004, was called to order by Mayor Hansen at 7:05 p.m.

Present: Council Members – Beckman, Hitchcock, Howard, Land, and Mayor Hansen

Absent: Council Members – None

Also Present: City Manager Flynn, Interim City Attorney Schwabauer, and City Clerk Blackston

B. INVOCATION

The invocation was given by Pastor Chris Guadiz, Fairmont Seventh Day Adventist Church.

C. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Mayor Hansen.

D. AWARDS / PROCLAMATIONS / PRESENTATIONS

D-1 Awards – None

D-2 Proclamations – None

D-3 (a) Joey Nardinelli, member of the Greater Lodi Area Youth Commission, acknowledged the Teen of the Month, Ashley Dominguez from Tokay High School, and he provided an update on recent activities and accomplishments of the Commission.

D-3 (b) Captain Robert Bechill, representing the Lodi Area All Veterans' Foundation, noted that \$370,000 is still owed by the Foundation to the City for the All Veterans' Plaza and fundraising events are being planned. On June 3, an Evening on the Plaza will be held. On June 6, a D-Day Remembrance will be held at the Library. A group of Delta College students and an instructor have been commissioned to write a veteran's book entitled, *Distant Thunder – Voice and Recollections of Lodi Area Veterans*. It is anticipated that the book will be published in August. An Oktoberfest event is being planned for October 1 and a Veterans Day observance will be held on November 11.

E. CONSENT CALENDAR

In accordance with the report and recommendation of the City Manager, Council, on motion of Mayor Hansen, Beckman second, unanimously approved the following items hereinafter set forth:

E-1 Claims were approved in the amount of \$3,938,837.78.

E-2 The minutes of April 21, 2004 (Regular Meeting), April 27, 2004 (Special Meeting), May 11, 2004 (Shirtsleeve Session), May 11, 2004 (Special Meeting), May 18, 2004 (Shirtsleeve Session), May 18, 2004 (Special Meeting), May 19, 2004 (Adjourned Special Meeting), May 21, 2004 (Adjourned Special Meeting), May 21, 2004 (Special Meeting), and May 25, 2004 (Shirtsleeve Session) were approved as written.

DISCUSSION:

In reference to the minutes of April 21, Mayor Hansen asked what the status was of the concern expressed by a citizen regarding the abandoned railroad tracks on Cherokee Lane between Lockeford Street and Victor Road.

Public Works Director Prima stated that he gave direction to staff to pave over the tracks, but was uncertain when it would be accomplished.

E-3 Adopted Resolution No. 2004-103 awarding the bid for purchase of one AC HiPot Tester to the sole bidder, High Voltage Inc., of Copake, New York, and appropriated funding in the amount of \$6,788.25.

E-4 Adopted Resolution No. 2004-104 authorizing the purchase of 122 40-caliber Glock semi-automatic pistols and 30 Glock G22 magazines from LC Action Police Supply, of San Jose, in the amount of \$20,569.77 from Asset Seizure funds.

- E-5 Adopted Resolution No. 2004-105 awarding the contract for the Water and Wastewater Main Replacement Program (Project No. 2) to Crutchfield Construction Company, of Lodi, in the amount of \$1,994,167.20; and appropriated additional funds for the project in accordance with staff's recommendation (totaling \$2,350,000).
 - E-6 Adopted Resolution No. 2004-106 approving the Improvement Agreement for the public improvements for 2650 West Lodi Avenue, directed the City Manager and City Clerk to execute the agreement on behalf of the City, and appropriated funds in the amount of \$8,220 for the required reimbursements.
 - E-7 Adopted Resolution No. 2004-107 approving the Fire Mid-Management (unrepresented) Addendum to Statement of Benefits.
 - E-8 Adopted Resolution No. 2004-108 ratifying the San Joaquin Council of Governments' Annual Financial Plan for Fiscal Year 2004-05.
 - E-9 Authorized funds from the Protocol Account for the City Council to host a reception honoring citizen volunteer service and retirements on various boards and commissions (approximately \$5,500 / \$20 per person).
 - E-10 Adopted Resolution No. 2004-109 appointing James R. Krueger, Finance Director, to the position of Treasurer of the City of Lodi, at no compensation, effective June 2, 2004.
 - E-11 Adopted Resolution No. 2004-110 approving the application for Wastewater Infrastructure Environmental Protection Agency (EPA) Grant and authorizing the City Manager to execute the appropriate documents.
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F. COMMENTS BY THE PUBLIC ON NON-AGENDA ITEMS

None.

G. PUBLIC HEARINGS

- G-1 Notice thereof having been published according to law, an affidavit of which publication is on file in the office of the City Clerk, Mayor Hansen called for the public hearing to consider an appeal received from Key Advertising, Inc., regarding the Planning Commission's decision to deny the request of Key Advertising for a Use Permit to allow a 75-foot-high electronic display sign and a Variance to double the maximum allowable sign area from 480 square feet to 960 square feet to be located at 1251 South Beckman Road.

MOTION / VOTE:

The City Council, on motion of Council Member Land, Beckman second, unanimously continued the subject public hearing to the Regular City Council meeting of July 21, 2004.

H. COMMUNICATIONS

- H-1 Claims filed against the City of Lodi – None
- H-2 Reports: Boards/Commissions/Task Forces/Committees – None
- H-3 The following postings/appointments were made:
 - a) The City Council, on motion of Council Member Land, Beckman second, unanimously made the following appointments to the East Side Improvement Committee:
 - East Side Improvement Committee
 - Ed Beswick Term to expire March 1, 2005
 - Fran Forkas Term to expire March 1, 2006
- H-4 Miscellaneous – None

I. REGULAR CALENDAR

- I-1 "Adopt urgency ordinance repealing and reenacting Lodi Municipal Code §13.04.130 and establishing low-income discounts for water, sewer, and refuse services and adopt resolution establishing discounts"

Public Works Director Prima stated that there are discount programs currently for electricity, water, wastewater, and refuse; however, the eligibility requirements for each of them are different. He recommended that it be changed so that the eligibility requirements for each of the discount programs be identical and discount rates for water, sewer, and refuse be set by resolution. The Electric Utility discount programs consist of the Single Household Alternative Rate for Energy (SHARE) program, which has an income eligibility requirement, and a senior/fixed income discount program, in which eligibility is ascertained through a combination of age and income level. He estimated that 95% of the SHARE program customers would be eligible to receive discounts on water, wastewater, and refuse and 100% of the senior/fixed income customers would be eligible for all of the discount programs.

Mr. Prima recommended that the following discount percentages be adopted:

	<u>SHARE Program</u>	<u>Senior/Fixed Income Program</u>
Refuse	30%	10%
Water	20%	10%
Wastewater	20%	10%

If the discount percentages were adopted, the total cost to other ratepayers would range from 8 to 27 cents per month. The revenue loss would be as follows:

	<u>SHARE Program</u>	<u>Senior/Fixed Income Program</u>
Refuse	\$7,930	\$2,800
Water	\$60,300	\$3,300
Wastewater	\$46,700	\$2,500

Following discussion, it was decided to amend the ordinance, Section 1, 13.04.130 Low Income Adjustments (last sentence), "Proof of eligibility for age and income (by means of tax return or equivalent documents) will be required annually by the City to qualify for rate adjustments provided herein."

Mayor Pro Tempore Beckman was opposed to the discount programs, as he likened it to a form of government charity and/or cash redistribution.

In reply to Council Member Howard, Mr. Prima acknowledged that the change in the eligibility requirement for the water, wastewater, and refuse discount programs would probably allow more people to qualify. He confirmed that Council is being asked to increase eligibility and increase the dollar amount of the discounts.

Council Member Howard was opposed to modifying the current programs.

MOTION / VOTE:

Mayor Hansen made a motion, Land second, to take the following actions:

- adopt an urgency ordinance amending Chapter 13.04 of the Lodi Municipal Code by repealing and reenacting Section 13.04.130 relating to low-income adjustments, with the following amendment to Section 1, 13.04.130 Low Income Adjustments (last sentence), "Proof of eligibility ~~may be required~~ **for age and income (by means of tax return or equivalent documents) will be required annually** by the City to qualify for rate adjustments provided herein";
- adopt a resolution establishing low-income discounts for water, sewer, and refuse services; and
- Direct staff to within 30 days present Council with a policy that outlines the procedure for citizens to apply for the discount programs and an annual proof of eligibility program.

The motion **failed** by the following vote (NOTE: an urgency ordinance requires a 4/5 vote for approval):

Ayes: Council Members – Hitchcock, Land, and Mayor Hansen

Noes: Council Members – Beckman and Howard

Absent: Council Members – None

City Manager Flynn stated that staff will bring the matter back with the policy through the regular ordinance process, rather than as an urgency ordinance.

Council Member Hitchcock referenced exhibit A to the staff report, noting that under the SHARE program it states, "Once the application is approved, it is up to the applicant to notify the Finance Department within 30 days of becoming ineligible for the program." She suggested that this statement be reconsidered as well when developing the policy.

- I-2 "Adopt resolution approving the retention of Folger Levin & Kahn as outside counsel and approving waiving the joint representation conflict"

Interim City Attorney Schwabauer recalled that Council previously approved the Folger Levin & Kahn (FLK) contract for a one-month period and \$150,000 fixed fee for the attorneys to "get up to speed." Before Council this evening is the remainder of the contract. The contract includes the stipulation that at the end of the one-month period FLK will provide Council with a budget forecast for the next six months. The proposed budget cannot be exceeded without prior Council approval. Every four months, FLK will submit a new budget for the upcoming six-month period. Also before Council is a request to approve the waiver of a technical conflict of interest that exists, due to FLK also representing the Lodi Financing Corporation. Mr. Schwabauer noted that the staff report for this item incorrectly reflects the funding source as only the Water Fund; whereas, it should have stated that the cost would be split equally between the Water and Wastewater Funds.

PUBLIC COMMENTS:

- Margaret Dollbaum, representing FLK, stated that the firm looked forward to serving the Council and the City in the Environmental Abatement Program litigation.

MOTION / VOTE:

The City Council, on motion of Mayor Hansen, Beckman second, unanimously adopted Resolution No. 2004-111 approving the retention of Folger Levin & Kahn as outside counsel for the Environmental Abatement Program litigation, approving waiving the joint representation conflict, and determining that funds will be derived from the Water/Wastewater accounts equally for this purpose.

- I-3 "Consideration of various matters pertaining to the November 2, 2004, General Municipal Election: a) Resolution calling and giving notice of the holding of a General Municipal Election; b) Resolution approving entering into a contract with the County of San Joaquin for the County Registrar of Voters to provide certain services; c) Resolution regarding impartial analyses, arguments, and rebuttal arguments for any measure(s) that may qualify to be placed on the ballot; and d) Resolution adopting regulations pertaining to the candidates' statements"

City Clerk Blackston presented the following information:

Item a) is a recommendation to adopt a resolution calling and giving notice of the holding of a General Municipal Election in the City of Lodi on Tuesday, November 2, 2004, for the purpose of electing two members of the City Council for terms of four years.

Item b) is a recommendation to adopt a resolution to enter into a contract with the County of San Joaquin requesting that the Board of Supervisors permit the County Registrar of Voters Office to prepare and furnish to the City of Lodi all materials, equipment, and services as agreed upon for the conduct of the election. This is necessary due to Ordinance 1438 adopted by the Council in 1988, which consolidated the municipal election with the statewide general election. The estimated cost of the election is \$109,750, which does not include the cost of printing & translating candidates' statements.

Ms. Blackston noted that election costs have continued to increase over the years, which can be attributed in part to district reapportionment, which resulted in multiple ballot types (for both districts and political parties) and most recently to the Secretary of State's decision to decertify the Diebold touch screen voting system in San Joaquin County until security measures are in place.

Item c) is a recommendation to adopt a resolution setting forth the policy regarding impartial analyses, arguments, and rebuttal arguments for any measures that may qualify to be placed on the ballot. The policy for word limitations, etc., as outlined in the resolution, is as specified in the Elections Code.

Item d) The Elections Code allows each candidate for a non-partisan elective office in a city to prepare a statement to be included with the sample ballot, which is mailed to each registered voter. Candidates' statements are designed to acquaint voters with a candidate's qualifications for the office they are seeking. Ms. Blackston quoted Elections Code Section 13307(c), which states in part that, "The local agency may require each candidate filing a statement to pay in advance to the local agency his or her estimated pro rata share as a condition of having his or her statement included in the voter's pamphlet." The County Registrar of Voters has estimated the cost for translating candidates' statements of qualifications into Spanish (as is now required in San Joaquin County) and printing them in the voters pamphlet at \$1,295 each. The cost incurred by the City for eight candidates' statements in the 2002 election was \$10,400. In addition, the proposed resolution for item (d) also stipulates that the word limitation for the candidates' statements remain unchanged at 200 words.

Ms. Blackston recommended that the City Council approve charging the candidates for the actual costs associated with the candidates' statements for the following reasons:

- Candidate statements are not a requirement to run for elective office;
- For individuals unable to pay the associated costs in advance, the Elections Code contains an indigency provision; and
- Government Code Section 85300 states that, "No public officer shall expend and no candidate shall accept any public moneys for the purpose of seeking elective office."

In reply to Council inquiries, Ms. Blackston stated that historically the City of Lodi has paid for the candidates' statements. She noted that in 2002 an informal survey was conducted, in which only 9 out of 75 cities who responded paid for candidates' statements; the remaining 66 cities charged the candidates for this cost.

Council Member Land asked Interim City Attorney Schwabauer whether he had a conflict of interest on this issue, as his term is expiring and he would be affected by the decision on this matter. Mr. Schwabauer replied that it is an unavoidable conflict as the Council is the only entity that can decide the question. Mr. Land stated that he would abstain from further discussion on the candidate statement issue.

PUBLIC COMMENTS:

- Frank Alegre pointed out that for years Council Members were relieved from paying the candidate statement fee and felt it was unfair to change the policy now, noting that some individuals who wish to run for office cannot afford it.

Council Member Howard agreed that the candidate statement fee might discourage some individuals from running for office.

Council Member Hitchcock asked Interim City Attorney Schwabauer to determine whether the City is in violation of Government Code Section 85300 by paying for the cost of candidates' statements. Pending this determination, it was agreed to continue Item d) to the next regularly scheduled City Council meeting.

MOTION / VOTE:

The City Council, on motion of Council Member Hitchcock, Beckman second, unanimously adopted the following resolutions:

- Resolution No. 2004-112 entitled, "A Resolution of the City Council of the City of Lodi, California, Calling and Giving Notice of the Holding of a General Municipal Election to be Held in the City on Tuesday, November 2, 2004, for the Election of Certain Officers of the City as Required by the Provisions of the Laws of the State of California Relating to General Law Cities";
- Resolution No. 2004-113 entitled, "A Resolution of the City Council of the City of Lodi, California, Requesting the Board of Supervisors of the County of San Joaquin to Render Specified Services to the City Relating to the Conduct of a General Municipal Election to be Held Tuesday, November 2, 2004"; and
- Resolution No. 2004-114 entitled, "A Resolution of the City Council of the City of Lodi, California, Setting Forth the Council's Policy Regarding Impartial Analyses, Arguments, and Rebuttal Arguments for any Measure(s) that May Qualify to be Placed on the Ballot for the November 2, 2004, General Municipal Election."

Item d) regarding resolution adopting regulations for candidates for elective office pertaining to candidates' statements submitted to the voters at the election to be held on Tuesday, November 2, 2004, was continued to the Regular City Council meeting of June 16, 2004.

- I-4 "Discussion and possible action regarding the proposed Large-Scale Retail Initiative and request by the Small City Preservation Committee for the Council to place the measure on the November 2, 2004 ballot, with the exclusion of the reference to outside retail areas"

City Clerk Blackston noted that the staff report for this item references the Council meetings of March 17 and April 7, at which discussion and action took place on matters related to large retail establishments. At the meeting of May 19, Betsy Fiske, Chair of the Small City Preservation Committee, reported that circulators of the Large-Scale Retail Initiative petition had collected over 2,800 signatures. Subsequently it was brought to their attention that the initiative would apply to car dealerships, which was not their intention. Because of this, Ms. Fiske submitted a document listing four choices for Council to consider, which is marked Exhibit B to the staff report for this item. Ms. Blackston pointed out that the first choice offers that "the initiative is placed on the ballot as is with the City acknowledging that the intention of the Small City Preservation Committee is that it does not apply to car dealerships and, if it passes, advising the Community Development Director of same." Ms. Blackston questioned whether this was a valid option for Council to consider because the Elections Code specifically states that if the petition is filed and qualifies, Council can either: 1) adopt the ordinance without alteration or 2) call an election, at which the ordinance without alteration is submitted to a vote of the voters of the city. Further the Elections Code states that "If a majority of the voters voting on a proposed ordinance vote in its favor, the ordinance shall become a valid and binding ordinance of the city. No ordinance that is either proposed by initiative petition and adopted by the vote of the legislative body of the city without submission to the voters, or adopted by the voters, shall be repealed or amended except by a vote of the people." Ms. Blackston stated that choice number three, which is the Committee's preference, asks that the language of the initiative be amended to exclude reference to "outside retail areas" and that Council place the measure on the November 2004 ballot for a public vote.

PUBLIC COMMENTS:

- Dale Gillespie believed that there were two flaws in the initiative: 1) the outside sales area inclusion in the calculation of 125,000 square feet and 2) creation of non-conforming uses. He pointed out that the existing Target, Wal-Mart, Geweke – Toyota, Dodge, Plummer (now under construction), Pontiac, and Cadillac facilities would all be non-conforming uses if the proposed initiative was passed by the voters. If a catastrophic event occurred resulting in damage that caused a need for these facilities to be rebuilt, they would first have to go through a full environmental process and approval at a general election. He felt that this would be a devastating consequence to any of the owners of these facilities.

Interim City Attorney Schwabauer reported that he received an amended version of the initiative today from the Small City Preservation Committee with its requested revision designed to remove the reference to the outside retail areas and to allow existing businesses to rebuild to the same standards as they had previously.

- Pat Patrick, President and Chief Executive Officer of the Lodi Chamber of Commerce, expressed his surprise in reading the newspaper ad that the Small City Preservation Committee published last Saturday, which stated, "Please attend the next regularly scheduled City Council meeting on June 2 to let Council know that we don't need them to waste any more of our money." Mr. Patrick suggested that the Committee consider what it has cost the City in delays of large retail projects and the loss of sales tax revenues, due to those delays. He felt that the proposed initiative was very anti-business oriented. He cautioned that if Council placed the initiative on the ballot, it would send the message that Lodi government is very anti-business. He pointed out that the proposed initiative expressly prohibits the City Council from granting any variances to large retail. It automatically changes the general plan, any future plans, all zoning ordinances, and City policies to conform to the spirit of the initiative. He rhetorically asked Council if any of the downtown merchants have expressed opposition to large retail businesses. He noted that they are not concerned and do not see it as competition. He felt that the departments of Public Works and Community Development did an excellent job in designing an intersection to handle the amount of traffic that large retail would create. The Planning Commission and City Council recently approved design standards to prohibit plain facades and sparse landscaping. Mr. Patrick warned that if Lodi does not have large retail that motivates consumer purchases, citizens will go outside the City to buy goods. The proposed initiative specifies that large businesses must pay for an election if they want to build in the City, which does not make Lodi attractive to large retail stores. On behalf of the Chamber of Commerce, Mr. Patrick urged Council to let the "people" put the measure on the ballot if it qualifies – not City government.

Mayor Hansen stated that he was in support of the Wal-Mart Supercenter project and the concepts of free enterprise and competition. He reported that in the past 24 hours he received nearly 60 emails on this issue. He contended that because it is so important to the community, an opportunity should be given for citizens to vote on the matter. He preferred that a very simple measure be placed on the ballot asking only the question of whether or not voters want large-scale retail of 125,000 square feet or more to build in Lodi.

- Shawnee Shahroody Spitler, representing the law office of Donald E. Mooney and on behalf of the Small City Preservation Committee, stated that the proposed initiative is a culmination of months of effort and thousands of supporters who found a need to put it on the ballot. She stated that, as a whole, it was not the intent of the group to include car dealerships.

- Eileen St. Yves urged Council not to amend the initiative, as those who signed the petition did so with it written as is.
- Bill Crow agreed with the statements made previously by Mr. Patrick and Ms. St. Yves. He asked why Council would want to keep businesses out, considering the City's current financial difficulties.
- Robert Fenton stated that he signed the petition, but did not know that it included open space. Mr. Fenton commented that he worked on the Wal-Mart stores in Lodi and Manteca. He believed that Wal-Mart Supercenters cause traffic problems and urged Council to allow the people of Lodi to decide this issue.

In response to Council Member Land, Mr. Fenton acknowledged that he appeared at previous City Council meetings with a box on his head and had declined to identify himself.

- Darryl Browman requested that Council not place the initiative on the ballot. He recalled that Council had been preempted by the Small City Preservation Committee on this matter, and now 2,800 people have signed the petition as it is currently written. He objected to the discriminatory nature of the initiative and suggested that if it is directed only at the Wal-Mart Supercenter, then that fact should be clearly stated. He commented that the Planning Commission and City Council adopted excellent design criteria for large retail establishments that apply to everyone.

Mayor Hansen disclosed that he met with Mr. Browman and two represents from Wal-Mart last Thursday. He asked what impact this would have on the Wal-Mart Supercenter project if the initiative is not resolved at the November 2004 election.

Mr. Browman replied that developers of the project have already been engaged in the process for nearly two years and have spent hundreds of thousands of dollars. He requested that a decision be made so that the project is allowed to proceed.

Council Member Hitchcock asked how the proposed Lodi Wal-Mart Supercenter would look different than the center currently being built in Stockton.

Mr. Browman responded that Lodi's design criteria mandates upgrades and stated that Lodi's Wal-Mart Supercenter would be one of the best two designs in the country.

- Frank Alegre stated that it appears that a small group of people are being allowed to control the city. He emphasized that Lodi cannot be supported with housing; it needs large businesses to attract people from surrounding areas. In order to be competitive the City must be business friendly. He asserted that members of the Small City Preservation Committee should be required to prepare an environmental impact report as well, because they justify their position based on unsubstantiated allegations of impacts from traffic, air pollution, etc. He felt that it was unfair to impose ordinance restrictions on businesses who have already begun the process of construction planning and suggested that they ought to sue if stopped from proceeding now. He noted that Wal-Mart supports the community through charitable contributions. He urged Council not to put its name on the initiative by placing the measure on the ballot itself.
- Martin Church noted that he sent an e-mail communication to Council on this matter. He stated that it appears the Small City Preservation Committee is specifically and solely opposed to the Wal-Mart Supercenter. He asserted that concept is completely un-American and noted that the country was built 200 years ago on the free enterprise system and it is what drives the economy today. He warned that if Council amends the initiative and places it on the ballot it will give citizens of the community the perception that Council endorses it.

RECESS

At 9:20 p.m., Mayor Hansen called for a recess, and the City Council meeting reconvened at 9:33 p.m.

I. REGULAR CALENDAR (Continued)

I-4 Mayor Hansen stated that if it is possible to place the measure on the November ballot for (Cont'd.) a public vote he would be in favor of it. He noted, however, that the Council also has a duty in terms of the process and obligation to the developer.

Mayor Pro Tempore Beckman recalled that three months ago he asked Council to consider a size limitation on large retail establishments; however, members of the Small City Preservation Committee preempted it with their initiative. He stated that legislative bodies are elected to make laws and policies and the initiative process circumvents that. He acknowledged that there are rare situations when it is necessary, e.g. when it is desired that the policy outlive the legislative body. He read the following excerpts from email communications received by Council that expressed his opinion on this matter as well:

- Matthew Lorentzen – “The people voted for you so that you can make the tough decisions. If we wanted decisions such as these to always be put on the ballot we wouldn’t need a city council, just a monthly election so all voters could make all decisions.”
- Gary and Sharon Hanna – “If we needed to bring everything to a vote to make a decision on projects, why do we need a city council, let’s just pass ballots out and vote on everything.”
- Ivan Suess – “We believe that the citizens have elected city council members who have spent years preparing themselves to make meaningful decisions such as this. They should have far more knowledge of the pros and cons surrounding such a decision than the average voting citizen. We believe that they would be shirking their elected responsibility by turning it back to the electorate to decide.”
- Evan Stone – “As much as I appreciate the need for citizen input on issues such as this, we have elected you to make these decisions for us. I don’t need to remind you that we live in a democratic republic, thereby eliminating the need for votes by the people on every issue that comes up.”
- Chamber of Commerce newsletter – “The entire city elected the council to weigh factors and make decisions. We encourage them to do so in this matter.”

Mayor Pro Tempore Beckman stated that the initiative proposed by the Small City Preservation Committee would not settle the issue on “big-box” stores, it would only guarantee more elections in the future each time a large business wanted to build in Lodi and it would take away the authority of the Council to make the decisions that the public elected it to make. Mr. Beckman stated that he would be willing to place a measure on the ballot limiting large retail establishments to 60,000 square feet. In the alternative, he would also support an advisory vote specifically targeted to the Wal-Mart Supercenter. He acknowledged that an advisory vote would be non-binding; however, it would let Council know how the citizens feel and the public would have an opportunity to vote on the matter.

Council Member Hitchcock felt that the matter should be voted on by the public because the community is divided over the issue and it has far-reaching impacts. She favored Council making amendments to the initiative as requested by the Small City Preservation Committee and placing the measure on the November ballot, which would also save the expense of a Special Election later.

Council Member Howard expressed her opinion that it is the decision of the Small City Preservation Committee whether or not, and in what form, the initiative moves forward. She felt it was the Committee's obligation to those who signed the petition to continue through the ministerial process to place it on the ballot in November in its current wording. To change the wording now would be to assume that the 2,800 signers agree with the modifications. If the Committee members are dissatisfied with their initiative language, they should change it and begin the process again.

Council Member Land agreed with previous comments that it appears the Small City Preservation Committee is opposing Wal-Mart, behind the guise of a more general issue. He noted that Council has already addressed design standards for large retail establishments. He felt that the Committee would be doing a disservice to the signers of the petition if it were amended now. Mr. Land recalled having previously promised the Committee that if they obtained enough valid signatures on the petition he would support placing the measure on the November 2004 general election ballot. If the Committee decides to pursue a special election he would oppose it, as well as a moratorium on large retail projects. In that case, he would recommend that Mr. Browman be allowed to move forward with his development.

Council Member Howard felt that no delays should be placed on the Wal-Mart Supercenter developers. The process now underway should be allowed to continue unhindered.

Mayor Hansen stated that the way the initiative is currently written, it is designed to fail. He reiterated his desire to place a simple measure on the ballot addressing only the issue of a size limitation of 125,000 square feet on large retail establishments. He cautioned that if the initiative is allowed to go forward as is, the cost may be enormous to the City in the long run, due to the negative impact on the interest of new businesses coming into the community.

Council Member Hitchcock stated that she would support an advisory vote on the issue of a 125,000 square foot size limitation on large retail establishments, providing that the Small City Preservation Committee did not pursue its initiative.

In response to Mayor Pro Tempore Beckman's earlier comment that an advisory vote would be non-binding, Council Member Land thought it to be unrealistic to believe there would not be an obligation to adhere to the outcome of the citizens' vote.

Council Member Howard pointed out that the City just conducted a public survey, which included the issue of "big-box" stores. She urged Council to focus on the fact that the initiative under consideration was prompted by the Small City Preservation Committee. It is not the Council's responsibility to correct their errors.

Mayor Hansen asked City Clerk Blackston if the Committee still had time to move forward with the initiative process for placement on the November 2004 ballot, to which she answered that it was possible, assuming that the San Joaquin County Registrar of Voters had adequate time to verify the signatures prior to the deadline.

MOTION / VOTE:

No Council action was taken on this matter.

- I-5 "Discussion and possible action regarding option to refer the proposed Large-Scale Retail Initiative measure to any city agency or agencies for a report on its effect on municipal operations (pursuant to California Elections Code Section 9212)"

Interim City Attorney Schwabauer reported that the Elections Code provides Council an opportunity, during circulation of a petition, to request that a report on the impacts of the

initiative be prepared. The report is elective; however, if it is desired, by requesting it now it would allow staff additional time, whereas, if it were requested when the initiative is before Council for certification, the Code allows only 30 days for its preparation.

Mayor Pro Tempore Beckman expressed support for requesting preparation of a report on the effects that the initiative would have on the municipal operations of the City.

Council Member Hitchcock was not in favor of the report, due to the likelihood that it would not be unbiased.

In reply to inquiries, Community Development Director Bartlam encouraged Council to decide now if it wished to have the report prepared to allow staff additional time to conduct the work. He reported that an Environmental Impact Report is now underway for the proposed Wal-Mart Supercenter. In addition, a report will be prepared on the fiscal impacts to downtown businesses from this project. He explained that the purpose of the report under discussion is to evaluate the impacts of the initiative – not the development project.

Mayor Hansen was in favor of the report in an effort to obtain as much information as possible before making a decision.

MOTION / VOTE:

The City Council, on motion of Mayor Hansen, Beckman second, unanimously referred the proposed Large-Scale Retail Initiative measure to staff for a report on the following items:

- Its fiscal impact.
- Its effect on the internal consistency of the city's general and specific plans, including the housing element, the consistency between planning and zoning, and the limitations on city actions under Section 65008 of the Government Code and Chapters 4.2 (commencing with Section 65913) and 4.3 (commencing with Section 65915) of Division 1 of Title 7 of the Government Code.
- Its effect on the use of land, the impact on the availability and location of housing, and the ability of the city to meet its regional housing needs.
- Its impact on funding for infrastructure of all types, including, but not limited to, transportation, schools, parks, and open space. The report may also discuss whether the measure would be likely to result in increased infrastructure costs or savings, including the costs of infrastructure maintenance, to current residents and businesses.
- Its impact on the community's ability to attract and retain business and employment.
- Its impact on the uses of vacant parcels of land.
- Its impact on agricultural lands, open space, traffic congestion, existing business districts, and developed areas designated for revitalization.
- Any other matters the legislative body requests to be in the report.

RECESS

At 10:20 p.m., Mayor Hansen called for a recess, and the City Council meeting reconvened at 10:25 p.m.

I. REGULAR CALENDAR (Continued)

NOTE: The following items were discussed and acted upon out of order.

- I-7 "Introduce ordinance amending Lodi Municipal Code Chapter 12.12 – Parks – by adding Article IV, 'Skate Parks,' relating to skate park regulations"

Mike Reese, Recreation Supervisor, reported that the proposed ordinance would enable the Kofu Park skate park to be reopened as an unsupervised facility. Skaters would be notified

of the requirement that safety gear must be worn. The park would be available for skateboarders and in-line skaters only, not for BMX bikes, due to Health and Safety Code regulations. Some residents surrounding Kofu Park had expressed concerns regarding noise, and in response, the ramps were altered, which staff believed reduced the noise level by 50%.

Council Member Howard noted that this matter has been brought forward due to the expense of subsidizing a private outside company to operate the park and the resulting cost to users, which was thought to limit attendance. She felt that the best type of skate park was one that was supervised; however, she recognized the current situation and supported reopening the facility for those who wish to use it.

Interim City Attorney Schwabauer reported that the Health and Safety Code provides the potential for limited immunity if a governmental entity adopted an ordinance that makes certain requirements, such as the use of safety equipment. The limited immunity only applies to skateboarding parks, not to BMX parks, and it only applies to children over the age of 14. The ordinance and Health and Safety Code provide no liability protection for children under 14 who are injured at the skate park. He emphasized the importance of seeking insurance to cover the City's \$500,000 self-insured retention.

Kirk Evans, Risk Manager, stated that coverage for the first half million dollars (i.e. the City's deductible) is estimated at \$5,000 to \$15,000 per year. He confirmed that the California Joint Powers Risk Management Authority (CJPRMA) does insure skate parks.

Mr. Schwabauer stated that the \$500,000 policy, as well as the additional coverage the City has through CJPRMA, would cover anyone of any age who was injured in the skate park.

Police Captain Main stated that the park officer would handle most of the incidents at the park and when this individual was off duty the beat officer would assume the responsibility.

Tony Goehring, Interim Parks and Recreation Director, preferred that the skate park be supervised, but absent that possibility, he was in favor of opening the park to users on an unsupervised basis in order to allow the City's nearly \$500,000 investment in improvements and equipment to be utilized. He acknowledged that most cities have gone to no-fee, unsupervised skate parks. There have been some problems, and he recommended that the facility be watched carefully.

Council Member Land recalled that when the skate park was initially discussed, it was suggested that if it was not successful, the equipment be removed and the facility be converted to basketball courts.

In reply to Council Member Hitchcock, Mr. Evans stated that he had communicated with other cities that have skate parks and they reported that their loss histories were low.

PUBLIC COMMENTS:

- John Connelly stated that he reviewed the proposed ordinance with some of his neighbors and they are "fairly happy with it." He was disappointed that it did not address the noise issue that residents have complained about repeatedly. He recalled that an agreement that was signed in January 2002 stipulated that an environmental reading of the noise level would be done within one year and it has not yet occurred. He asked that the park not be opened until the noise issue is resolved.
- Jason Wilkins stated that he lives across the street from Kofu Park and supported staff's recommendation. He was familiar with unsupervised skate parks in other cities and found them to be successful. He suggested that donations be sought from businesses for advertising in an effort to cover the cost of insurance. In addition, he recommended the use of volunteers to operate the snack bar.

Mr. Schwabauer recommended the following amendments to Ordinance 1748, to which Council concurred:

- Section 1, 12.12.310, (15), No person shall enter or remain in or upon the skate park premises **while closed as determined by the Parks and Recreation Department or** between the hours of 9:00 p.m. and **10:00 a.m.**
- Section 1, 12.12.320, Violations, A, Every act prohibited or declared unlawful and every failure to perform an act made mandatory by this Chapter shall be prosecuted as a misdemeanor **for violations of 12.12.310 A (9) and A (15) or an infraction for violations of 12.12.310 A (1) through (8) and A (10) through A (14)** as provided in Section 1.08.010 of this Code.

In response to Mr. Connelly's earlier comments, Mr. Schwabauer explained that the noise report was not able to be performed because the settlement agreement with Citizens for a Quiet Kofu Park required that the sound study be done both during special events and during regular events so it would show the true effects on the community. Since that time there have not been any special events at the park. Mr. Schwabauer reported that he spoke with counsel for and a representative of the Citizens group, and both agreed that it did not make sense to do the study until the conditions warranted it. Because the park will no have special events, he suggested that the settlement agreement be amended to allow its intent to be effectuated.

Council Member Hitchcock commented that most of the schools in Lodi Unified School District would be on a modified traditional schedule within two years and suggested that the park not be open during school hours.

MOTION / VOTE:

The City Council, on motion of Council Member Hitchcock, Beckman second, unanimously introduced Ordinance No. 1748 entitled, "An Ordinance of the City Council of the City of Lodi Amending Lodi Municipal Code Chapter 12.12 – Parks – by Adding Article IV, 'Skate Parks,' Relating to Skate Park Regulations," as amended with regard to hours of operation and violations, and authorized the purchase of additional insurance up to \$15,000.

VOTE TO CONTINUE WITH THE REMAINDER OF THE MEETING

The City Council, on motion of Council Member Hitchcock, Hansen second, unanimously voted to continue with the remainder of the meeting following the 11:00 p.m. hour.

I. REGULAR CALENDAR (Continued)

- I-8 "Introduce ordinance amending Title 10, Chapter 10.44, 'Stopping, Standing, and Parking,' by adding section 10.44.170 related to disabled parking regulations"

Police Captain Main reported that a new law was passed by the California legislature this year that would allow an assessment of an additional \$100 to disabled parking violations. There are restrictions that require the City to utilize the money for the purpose of enforcing parking-type violations related to disabled vehicles only. The Police Department anticipated that \$40,000 in revenue would be raised, as approximately 400 handicap parking violations are issued each year. He stated that a press release would be published to notify the public.

MOTION / VOTE:

The City Council, on motion of Mayor Hansen, Beckman second, unanimously introduced Ordinance No. 1749 entitled, "An Ordinance of the City Council of the City of Lodi Amending Title 10, Chapter 10.44, 'Stopping, Standing, and Parking,' by Adding Section 10.44.170 Related to Disabled Parking Regulations."

- I-9 "Discussion and possible action regarding a proposed City of Lodi Code of Ethics and Values"

Deputy City Manager Keeter reported that a Code of Ethics and Values has been submitted by Pastor Dale Edwards for Council adoption. She read the eight core values: ethical, professional, service oriented, fiscally responsible, organized, communicative, collaborative, and progressive.

Pastor Edwards commented that some of the challenges Council faces are inherent in its responsibilities. Council Members are individuals and bring to the table a variety of views, history, background, and expertise. Management styles, e.g. macro- and micro-management, can create conflicting views. Pastor Edwards stated that his concern was to find a remedy and lay a track for future discussion and direction for Council, which he believed the Code of Ethics and Values would help to do. He noted that the Code came from the City of Santa Clara and was amended for the City of Lodi, for Council, City employees, and entities that work within the municipal government structure.

Council Member Howard thanked Pastor Edwards for the time he had given to Council individually and collectively. She saw the Code of Ethics and Values as not only beneficial to Council at this time, but also for future Council Members as it would provide them with something to work toward, stand upon, and hold on to. She believed it would have long-lasting benefits.

In reply to Mayor Pro Tempore Beckman, Pastor Edwards stated that requirements of the Brown Act cause a challenge for conducting effective team-building sessions with Council. In the team-building process, nuances and dynamics of individual personalities and backgrounds are brought out and he did not wish to subject Council Members to that type of scrutiny in a public forum. He did not see how to accomplish Council team-building sessions in a manner that did not raise more challenges than it solved and expressed hope that the individual efforts he made had been beneficial.

Interim City Attorney Schwabauer suggested that item 1, f), be amended to, "I show respect for persons, confidences, and information designated as confidential **to the extent permitted by California law**," to which Council concurred.

Mayor Hansen noted that the Code as written also applies to city employees, volunteers, and others who participate and questioned whether it could be imposed on them. He pointed out that the Police Department has a Code of Ethics that may or may not totally parallel to this.

PUBLIC COMMENTS:

- Judy Steinke, Business Agent for American Federation of State, County, and Municipal Employees, representing the General Service workers and Maintenance & Operators unit, asked what would happen if the Code was applied to City employees and a supervisor felt that they were not living up to the expectations.

Council Member Howard recalled that this came about as an effort to help with team building that was breaking down primarily at the level of the Council and Council to appointees. She suggested that a sentence in the preamble to the Code be amended to, "All elected and appointed officials, ~~City employees, volunteers, and other who participate in the City's government~~ are required to subscribe to this Code....," to which Council concurred.

MOTION / VOTE:

The City Council, on motion of Mayor Pro Tempore Beckman, Land second, unanimously adopted Resolution No. 2004-115 approving the City of Lodi Code of Ethics and Values, as amended.

I-6 "Introduction of draft fiscal year 2004-05 Financial Plan and Budget"

Finance Director Krueger submitted the draft budget (filed) and stated that it would be discussed in detail during upcoming Shirtsleeve Sessions.

City Manager Flynn reported that the draft budget includes the following:

- No layoffs
- No furloughs
- No salary reductions
- Extension of the Voluntary Time Off program
- Recommendation to explore a medical insurance cap
- Recommendation to explore a two-tier retirement plan or other alternative
- Increase hiring freeze to 28 positions
- Will review citywide contracts for cost savings, to include: highway signs, services for landscaping, tree trimming, consultants, etc.
- Recommendation to suspend General Fund Capital projects for two years

Deputy City Manager Keeter reviewed the budget calendar. On May 19, the City Manager's Budget Advisory Committee recommendations and City Manager's recommendations were presented to Council. The draft budget released tonight includes policies, debt service, fund balance, revenues by major source, interfund transfers, personnel staffing, and a summary of significant expenditure requests. The appropriations limit will be in the final budget presented to Council for adoption at the June 30 Special City Council meeting.

Discussion ensued regarding Council Members schedules, following which it was agreed *not* to schedule a Special Meeting on June 30 and instead to consider adoption of the 2004-05 Financial Plan and Budget at the regularly scheduled meeting of July 21, 2004.

MOTION / VOTE:

There was no Council action taken on this matter.

J. ORDINANCES

None.

K. ADJOURNMENT TO AGENCY MEETINGS

K-1 "Meeting of the Lodi Public Improvement Corporation"

At 11:48 p.m., Mayor Hansen adjourned the City Council meeting to conduct the meeting of the Lodi Public Improvement Corporation. Following the call to order, Secretary Blackston recorded roll.

MOTION / VOTE:

The Corporation, on motion of Director Land, Beckman second, unanimously adopted Resolution No. LPIC2004-02 electing the new officers to the Lodi Public Improvement Corporation for the year 2004.

There being no further business, the meeting was adjourned at 11:48 p.m.

K-2 "Meeting of the Industrial Development Authority"

At 11:49 p.m., Chairperson Hansen called to order the meeting of the Industrial Development Authority, and Secretary Blackston recorded roll.

MOTION / VOTE:

The Authority, on motion of Authorizing Member Beckman, Land second, unanimously adopted Resolution No. IDA-25 electing the new officers to the Industrial Development Authority for the year 2004.

There being no further business, the meeting was adjourned at 11:49 p.m.

K-3 "Meeting of the Lodi Financing Corporation"

At 11:50 p.m., President Hansen called to order the meeting of the Lodi Financing Corporation, and Secretary Blackston recorded roll.

MOTION / VOTE:

The Corporation, on motion of Director Beckman, Hansen second, unanimously adopted the following resolutions:

- Resolution No. LFC-11 electing the new officers to the Lodi Financing Corporation for the year 2004; and
- Resolution No. LFC-12 approving the retention of Folger, Levin & Kahn as outside counsel for the Environmental Abatement Program litigation and approving the waiving of the joint representation conflict.

There being no further business, the meeting was adjourned at 11:50 p.m.

K-4 "Meeting of the City of Lodi Redevelopment Agency"

At 11:51 p.m., Chairperson Hansen called to order the meeting of the City of Lodi Redevelopment Agency, and Secretary Blackston recorded roll.

MOTION / VOTE:

The Agency, on motion of Member Hansen, Beckman second, unanimously adopted Resolution No. RDA2004-01 electing the new officers to the City of Lodi Redevelopment Agency for the year 2004 and waiving compensation for the June 2, 2004, meeting.

There being no further business, the meeting was adjourned at 11:51 p.m.

Mayor Hansen reconvened the City Council meeting at 11:51 p.m.

L. COMMENTS BY CITY COUNCIL MEMBERS ON NON-AGENDA ITEMS

- Council Member Howard recently attended a dinner at Elkhorn Country Club, at which she presented a certificate of recognition to the Lodi Kiwanis Club who celebrated its 60th anniversary in May.
- Mayor Hansen commented that yesterday he attended the celebration for A&W Root Beer's 85th anniversary. He learned that A&W is the oldest franchise in the history of the country. A&W root beer was sold for the first time in 1919 at a parade held in Lodi for World War I veterans.
- At the request of Mayor Hansen, Council Member Howard reported that the San Joaquin Council of Governments (SJCOG) addressed the Measure K renewal issue at its meeting a week ago. The Measure K renewal measure will not take place this year, but instead is planned to be placed on the November 2006 ballot. The main reason for postponing the renewal effort was that the city of Stockton had taken the position that it would not support the proposed renewal as it stood. The needed number of votes is based on city population, as well as city representation on the SJCOG Board. Consequently the Board would not be able to get enough votes from the public in order to pass the renewal without the support of the city of Stockton. The new timeline will allow an opportunity for each city to review the expenditure plan, consider the regional transportation impact fee, and for Stockton to provide a formal presentation about its request to change the voting governance of the SJCOG Board.

Continued June 2, 2004

- Mayor Hansen announced that on Saturday at Lodi High School a fundraiser for cancer research would be held and on Sunday at Lodi Lake the annual "Jog A Dog" fundraiser for Animal Friends Connection would be held. Mayor Hansen stated that he would like to meet with Council Member Hitchcock, Public Works Director Prima, and representatives from the city of Galt next week to discuss the issue of shared transit funding.

M. COMMENTS BY THE CITY MANAGER ON NON-AGENDA ITEMS

- City Manager Flynn announced that City Clerk Blackston's birthday is on June 12.

N. ADJOURNMENT

There being no further business to come before the City Council, the meeting was adjourned at 11:57 p.m.

ATTEST:

Susan J. Blackston
City Clerk